

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Hetherington

Serial No.: 09/684,205

Group No.: 2673

Filed: October 6, 2000

Examiner: J. H. Nguyen

For: MOVING DIELECTRIC CAPACITIVE SENSOR

**APPELLANT'S REPLY BRIEF**

Mail Stop Appeal Brief  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

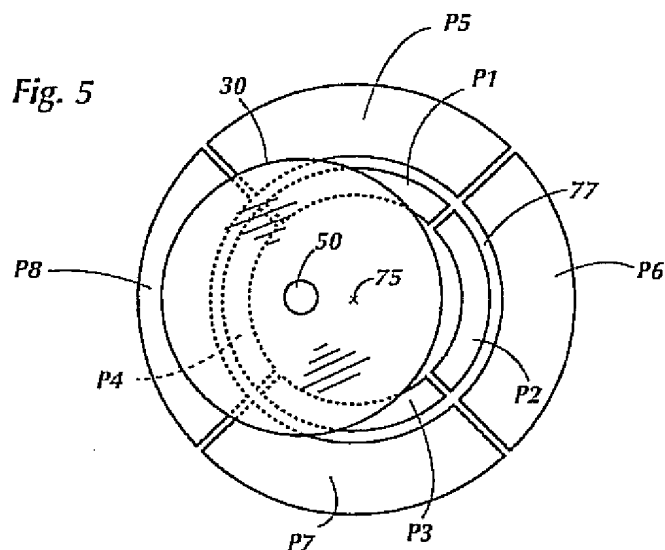
Dear Sir:

This reply brief is being submitted in response to new arguments raised by the Examiner in the Examiner's Answer dated August 20, 2007.

On page 8 of the Examiner's Answer, under section 10 "Response to Argument," the Examiner states that the limitation "an output for communicating ... rotation to the utilization device" in the last line of claim 1 "requires a single 'rotation' communicated to the utilization device." Appellant has no idea how or why the Examiner reaches such a conclusion. The claim clearly sets forth "an elongate member ... operative to rotate and laterally shift the element ...." Appellant cannot appreciate why "a single rotation" would be evident or required by this claim.

On page 9 of the Examiner's Answer, the Examiner continues to assert that the joystick (or "elongate member") does not communicate rotation to the utilization device. Of course it does. This is not only true from the claims but also the specification, the drawings and the disclosure overall.

On page 10 of the Examiner's Answer, the Examiner attempts to explain how Figure 5 of the Dammeyer reference supports the idea of "rotation." Figure 5 of the Dammeyer reference is reproduced below to assist the Board in following this argument.



According to the Examiner, “the dielectric element (30) rotates around the reference location (75) such that a center of the opening 50 of the dielectric element 30 travels (rotates) on a circle having a center at the reference location 75. Clearly, such rotation causes a change in capacitances.” (Examiner’s Answer, page 10, section (i)). Appellant generally agrees with this assessment. However, Appellant’s independent claims set forth that the rotation of the elongate member can be determined as a function of measured capacitance *with or without lateral shifting of the dielectric element*. The Dammeyer apparatus is not capable of rotating without lateral displacement. In fact, *only* lateral displacements in the Dammeyer apparatus cause the hole 50 to “travel around” center point 75. Since the distal end of handle (15) of Dammeyer is round, and because it is received by a round hole, if the handle were simply rotated in place (i.e., without lateral displacement), the dielectric *would not move*. For this reason alone, *prima facie* obviousness has not been met. The Examiner’s statement on page 10 of the Examiner’s Answer, under section (ii), that “Dammeyer’s apparatus is capable of performing a rotational (angular) displacement” is therefore misplaced.

On page 11 of the Examiner’s Answer, the Examiner argues that the shape shown in Figure 7 of Appellant’s disclosure “is not an oval or egg-shape.” However, the Board well knows that an applicant is entitled to be his/her own lexicographer, and in this case, if Appellant wishes to call the shape in Figure 7 “oval or egg shaped,” the inventor(s) have every right to do so. Moreover, rather

than issuing a rejection on enablement grounds, the Examiner simply states that "the dielectric element is not significant." This is clearly not true, as Appellants have spent many pages in the specification explaining why the particular shape shown in the figure is, indeed, significant.

Respectfully submitted,

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